2: Bernardi E, M-4 (no date) 1955 FL12 Masai FL12

clansmen frequently meet on the water, and other matters — marriage, debts, etc. — come up for settlement before the tribunal ". Clan ownership does not exclude individual ownership, which is integrated by the former as a sort of higher supervision. The point is that no clan property must be passed over to other clans without the owning clan's approval. HOBLEY,[29] states that cattle used to be marked by a clan brand showing clan-possession, and sometimes by a brand of the individual owner.

The corporate bond arising from clan relationship is confirmed by cases of murder compensation. Even if a murderer is a wealthy man, and might pay all the compensation out of his own stock, " the other branches of the clan would still contribute and they would pay their share ". However, " if a Masai kills a member of his own branch of the *gilat* he pays compensation himself, and the other branches do not contribute ".[30] THORNTON, on the other hand, was told by his informants that no compensation is expected when a man kills a member of his own branch. They say: " what would be the use of taking a fine from one's own sub-clan? "[31] HOBLEY reports further that " each branch of the *gilat* to whom the murdered man belongs, receives a share of the compensation: 2-3rds to the murdered's father ", and the rest is distributed among the other elders of the clan.[32] This is also confirmed by the notes of MAGUIRE on the penal code of the Masai.[33]

One should note that the corporate bond formed by clan relationship is of a particularist nature. It ties members to their own clan in opposition to other clans within the same tribe.

* * *

The many efforts of the Administration to identify a native political institution for local government make a very interesting piece of etnographical history. First in Kenya, and also, after 1918, in Tanganyika, one *laibon* was recognized as the Paramount Chief of the Masai. In Kenya such an office was abolished in 1918, while a graded system of councils was introduced: a Central Masai Council, 14 Native Councils and local Headmen. They acted as tribunals,

[29] HOBLEY, *Ethnology of A-Kamba*, p. 198.
[30] HOBLEY, l. c., p. 133; PENNINGTON, l. c., pp. 43 s.
[31] LAMBERT, *Some Notes on the Masai of Kenya Colony*, in *J. R. A. I.*, 66, 1936, p. 393.
[32] HOBLEY, l. c.
[33] MAGUIRE, *The Masai Penal Code*, in *J. A. S.*, 38, 1938, pp. 13 ss.

where unarmed natives of the neighbouring tribes, whose duty or pleasure took them into the Masai Reserve, have been wantonly murdered, and the catalogue also includes numerous instances of thefts of stock from neighbouring farms and territories. An investigation of the record of each of these cases will show that in a small number only of incidents has the perpetrator of the crime been brought to book. The probability that the commission of a stock-theft or a murder can be performed by a Masai of the "Muran" class without the knowledge of his associates is so slight that it has been found necessary to accept the principle that the responsibility for the surrender of criminals traced to any particular area rests on all the members of the section inhabiting that area. This system is in vogue throughout all the native districts of the Protectorate and is generally employed with a fair measure of success, but a similar success does not attend its application to the Masai Reserve, and this reserve is, in fact, the area to which the great majority of impositions of fines under the Collective Punishments Ordinance, 1909, have been applied, the refusal of the Masai to assist in tracing the criminal rendering it necessary to utilise the provisions of the Ordinance to effect the punishment of the whole section involved. The bleeding of a spear by the murder of an unprotected wanderer or the theft of stock guarded perhaps by children is a survival of the traditions which necessitated the "Muran" to prove their manhood during the period in the standing army or the "L-Ayok" to prove their worth before circumcision. Such acts may not be regarded at the present day as valiant, but it seems that the criminal's associates have not yet come to look on them as reprehensible, and the Masai, on account of their wealth, do not possess the same dread of a collective fine as is felt by certain of the poorer tribes. Under any circumstances, the "Muran" offer no assistance in the tracking down of the criminal and the elders, though professing detective zeal, are powerless to intervene. The attitude of the section involved in such cases is one of surprise and listlessness—they never know anything—and the collective fine which may ensue has not hitherto had the result of discouraging the adoption of such an attitude.

Divisions.

It will generally be found that fines of this nature have been levied on Companies or "Sirits" of different clans, and, sometimes, on all the members of a clan or division. There is no case on record in which a collective punishment has been imposed on the Masai tribe as a whole. It is therefore necessary to refer shortly to the divisions into which the Masai, who are all of one tribe, are divided by their traditions and customs, and to note also the divisions into which they are divided in practice for the purposes of the administration of the reserve. A description of the traditional divisions of the Masai people is given in Mr. Hollis' Book on the Masai, pp. 280 and 281, but the names which are now in use to denote the divisions of the tribe within the reserve do not exclusively follow either the genealogical or the geographical divisions which are there set out. The Officer-in-Charge of the Masai reserve is endeavouring to confine the members of each division to certain areas set apart for them as locations, and this step will have the effect of reconciling the name given to a division with the locality in which it is found, thus tending to perpetuate a convenient form of nomenclature.

Whatever may have been the original system on which these divisions were formed, it appears that there is a really marked clan feeling between them, and several incidents are recorded which disclose the presence of mutual distrust and strained relationship between the divisions, while interference by one division with another is keenly resented. These divisions form the basis of the tribal organisation of the Masai as it exists to-day and each division has its own Council of Elders. In the recently constituted "Masai Council," one elder, or more, has been chosen to represent each division and the Council so formed has been accepted as representative of the whole tribe. It will thus be seen that the division system presents an admirable method of dealing with the tribe, closely allied to the location system employed in other Native Reserves in the Protectorate, and has enabled unrest or crime to be so localised as to limit the liability for offences committed to certain definite sections of the Masai. Nevertheless, there is not sufficient difference in the behaviour or customs of the members of each

Masai Council.

9:Fosbrooke G-5 (1936-1948) 1948 FL12 Masai FL12
Kisonko

When blood-money is paid, it is less when the

payment is between clansmen. The logical extension of this principle is that when cattle are due from one member of the clan they may be taken from any of his clansmen. This is in fact the rule for payment of compensation amongst the Masai, though the offender and his near relatives naturally pay more. In the one case of blood money in which details were obtained, members of sub-clans other than that of the murderer contributed, and it is, therefore, safe to calculate that clan responsibility and cohesion applies to the whole clan in greater degree than it does to the sub-clans.

B. Family matters — the boma system — the 'gate' — polygamy — marriage stabilities — number of cattle to each gate — relations in law — travelling — adoption — economic.

Briefly, the Masai live in groups of families, usually three, four or five together, in a village comprising a ring of huts, built immediately inside a circular fence, which thus forms an enclosure for the cattle. Such villages are usually built some two or three miles, frequently more, from the water which the cattle use, so that it is unusual to find more than two or three bomas in close proximity. Frequently a boma is a mile or more from its nearest neighbour. In the village each family possesses a separate gate, *enguitoma*, round which its members are grouped.

It is difficult to define a typical family or 'gate' unit. The ideal of a Masai elder is to possess half a dozen wives with many children, ranged on either side of his gate. As he marries *his* places the first on the right of the gate, and the second on the left; when a third wife comes in she builds her hut immediately to the right of the gate, and the fourth immediately to the left, the earlier wives moving round accordingly. Each wife on arrival is given a number of cattle, which are hers to hold in trust for her children. She is also given, for tending, some of the unallocated cattle which the elder holds in reserve for future marriages; such cattle are termed *enpiaku e boo*. Those living to the right and the left of the gate form two distinct groups, *indaisir'ôs*, and for the purpose of inheritance, should a wife on the left die without male issue, her cattle will be inherited by the senior male on the left of the gate; they may in no circumstances be taken by an heir on the right so long as there is a son on the left to inherit.

When the sons are circumcised, they nominally take over the guardianship of their mother, and of the cattle allocated to her. In the old days they would move off with her to the *manyatta*, warriors' village, but this is less frequent now. As they approach elderhood, however, in polygamous families the sons at times claim their patrimony and move off with their mothers, to form a separate gate in some other boma. More frequently they show little desire for this responsibility, and spend the greater part of their period of warriorhood wandering round the countryside, or living in meat-camps in the bush (*ol pul*). Once they become elders it is exceptional for a son to continue to live with his father, except when the latter has reached senility.

This is the theory of the gate system, but in practice it varies very considerably from the ideal. Polygamy (see below) is limited by the

13:Huntingford E-4 (no date) 1953 FL12 Masai FL12

from each side suckled each other's babies. Peace was then kept till it suited one side to break it. With Bantu tribes the Masai sometimes made mock blood-brotherhood with intent to deceive, for they have no blood-brotherhood of their own. As among the Nandi, grass is a sign of peace, and a handful of grass constitutes a plea for mercy recognized by the Masai and those whom they count as more or less their equals, the *Il-magati* or "enemies," such as other pastoralists, but not *Il-meek*, the Bantu agricultural tribes.

Legal Sanctions

The Masai legal system seems to be less organized than that of the Nandi, and to depend even more on the force of public opinion than on the position and status of the council leader. It appears that only in cases of homicide is there anything like a regular procedure. The Masai distinguish between intentional and accidental homicide, the difference being that for the latter there is no blood feud and the amount of compensation is smaller. The number of blood-cattle paid as compensation, *in-kishu oo-l-oikop*, "murder cattle," varies, but may be as high as two to three hundred for a man; Hollis says 50 for a boy, and Merker 19 head of cattle and 19 goats and sheep for a woman. Fosbrooke gives the figures as 49 for a circumcised man, and 29 for a woman or uncircumcised man. The Il-Arusa are recognized as a group which pays and receives blood-cattle. The murder may be avenged by the dead person's brothers who may try to kill the murderer; and if compensation is not paid, the resulting feud may involve all agnatic kinsmen on both sides. It is not clear whether killing of the murderer makes the avengers also liable to compensation. If the victim belongs to the same sub-clan as the murderer, no compensation is payable. If they belong to different sub-clans of the same clan, or to different clans, all members of the murderer's sub-clan contribute, and the cattle are divided among the members of the victim's sub-clan after his senior brother has received half the stock. When a settlement has been made, peace is made between the families concerned by an exchange of garments. Maguire gives details of three methods of dealing with cases of murder. (1) The relatives of the victim take all the murderer's cattle; they hold a council and, after giving a few cattle to certain elders and old women, the *loli-oarn*, herd-leaders, and cows near calving are returned to the owner; the rest they divide among themselves. (2) If action is not taken at once, the relatives of the murderer send a stick to the relatives of the victim, the acceptance of which implies an agreement to meet and settle the matter, and compensation is arranged, the figure named being 40 head of cattle, with nine more added to symbolise the human body (reckoned by the number of its orifices). (3) Sometimes the relatives of the victim do not take action for two years or more; they then raid the murderer's kraal by night and demand the number they want. For killing a smith, *ol-kunoni*, no compensation was payable, nor was there a blood feud. If a smith killed a Masai, several warriors set out and killed several smiths. Theft (except of cattle) is apparently considered of little account: "if a Masai steals milk or meat or other small things, he is not fined. Grown-up people rarely steal," says Hollis. For cattle thefts, the thieves when caught were fined, seven head from each man concerned.

The general principle that a man is entitled to compensation for a wrong suffered is recognized by all Masai; and this recognition is extended to "foreigners" like Dorobo, provided the people concerned are well known to each other. On being accused, a man may submit to an oath, *ol-maasai*. In some cases a diviner of the type called *ol-gnishi* by Merker is employed to find a guilty person. The whole subject of Masai legal institutions needs detailed investigation.

Modern Administration

The Masai political structure has proved even more difficult of adaptation than that of the Nandi, since it lacked the clear-cut *porosiet* divisions of the latter. Up to 1918 the chief laibon in Kenya was accepted by the Administration as a paramount

/40 cont./

415 492 [283] Now and then the receptacles are also replaced by two pouchlike pack-holders (ol deretâl, el derẽta), one tied on the other. These have the oval shape of a shield and consist of a wooden frame that is covered with a plaited work of leather thongs or ropes. Otherwise they serve to hold the pack loaded on the donkey and sometimes also on oxen. Mats are unknown; dressed neat-skins take their place. Mortars are also unknown.

285 239 412

III.

000 Closer family relationships. -- Kinship designations. -- Terms of address for relatives.

602 [613] [614] Since every tribe and every lineage are descended from a tribal ancestor, the tribal and lineage members consider themselves more or less distant relatives. The family, one's own as well as, ascending, those of the father and of the mother, forms the closer relationship. The child follows the father's family (father right).

[611] [612] Relatives are not responsible for punishable offenses, fines, or debts of a relative. Legally they need not support them either in connection with impoverishment or release from captivity; it is such a general custom, however, that probably no one ever evades it.

601 /41/ The Masai language is poor in particular kinship designations; most of them are made up of words for father, mother, brother, sister, son, daughter, etc.

Father: baba.

Mother: jẽjo.

Another wife of the father: eŋg afhji e jẽjo.

Principal wife: e' ŋgorojoni kitok, that is, the great woman, or en ãltero eŋg aŋ, that is, the first in the kraal.

Every other wife: e' ŋgorojoni.

Brother (1):

1. Brother and sister come from the same wife, half brother and half sister from different wives of the same father.

[Warrior Kraal]

/84 cont./

701 836 As long as the latter stays in the kraal, his girl is obliged to remain faithful to him, but if he leaves it, even for only one day, she is entitled to console herself with another kraal companion, provided that between her and him -- as is also a condition for her relationship with her os sandja -- there is no obstacle such as the above-mentioned obstacles to marriage based on lineage affiliation.

233 857 The tending of the livestock falls to the boys. Even at night they sleep outside in order to watch them and are assisted in the watch by the mothers, who take turns several times every night and frighten off wild animals by shouting.

361 /85/ 233 417 [343] [672] Within the ring of huts there is a circular kraal of thorns for the cattle and near that a narrower one for goats and sheep, while beside almost every hut there is a small lean-to for the young calves and a barricade of branches for the older calves of the individual ones. Thus everyone remains responsible for the barricading of his calves and, if at night they should find their way to the cows, has no excuse for starting a quarrel with others in the morning on account of the lack of milk. Milk is the only food that the Ol morani takes in the kraal, and the lack of it is therefore especially grievous.

701 262 264 [273] [276] Outside of it, only meat serves the warriors as food, and, to be sure, only that from cattle, sheep, and goats. They do not take vegetable food, honey beer, and tobacco. The meat meals are always held outside the kraal; a slaughtered head of small livestock is consumed a few hundred meters from the kraal, behind a bush, whereas for the consumption of a head of cattle a more distant spot under a shade tree in the bush /Fig. 18 appears here/ or forest is chosen. For these

701 262 264 574 forest meals (ol bul, e buli) mess companies are formed in every warrior kraal, which are designated sirit' ol bul and which consist of five or six members, each of whom is called os sirit ol bul. Such banquets take place once or twice a month for each mess company and last three or four days each time, during which an ox is consumed. Besides the warriors, one to three girls also take part, and also a few boys as servants for fetching pots, water, and firewood, as well as for kitchen work. Prior to the slaughtering each mess company splits up into two equal-sized parts, each of which is called

000 ol gibet and prepares its own camp. Under a shade tree with thick

/213 cont./

439 designate the first one as en ańga en djóre, i.e., war cloth, because the warriors like to dress up in it; the konguru they call en ańga bos, i.e., colored cloth, and the gamti, ol garascha.

43 The demand for the individual trade articles varies a great deal. At times the need for one kind is so well supplied that it is either not taken at all or far below its value. Correspondingly, the value of another kind often rises disproportionately high through the heightened demand. A lengthy discussion back and forth precedes every exchange or purchase transaction. As a sign of a settlement, the seller spits [452] on the object. The exchange follows at once; only trustworthy acquaintances are granted credit. The risk in the matter, for cattle, does not pass to the buyer until the day after purchase, otherwise immediately.

426 The creditor proceeds against a nonpaying debtor first by complaint,
686 and if this remains without effect, he helps himself to his property by force, provided that the debtor can comfortably pay, but for some reason, usually one that has nothing to do with the debt, does not want to pay: a road that is also often taken as the only one. Only upon his impoverishment will the creditor become earnestly pressing. [672] Then, if the debtor is incapable of paying, his brothers and half brothers, or if such are not present or are unavailable, his paternal cousins must pay. Whether the former or the latter pay, the repayment of the debt is always arranged so that no great economic hardship arises for the one paying. The creditor, if he does not voluntarily [626] enter upon the arrangement, is forced into it by the public opinion, which is often expressed in violence. An inconsiderate collection of an outstanding debt actually never occurs; rather, the creditor almost always displays an extraordinary kind-heartedness and forbearance about it and often lets himself be put off for years or waits patiently until the debtor or his heir is in such a good position that the repayment of the debt will be easy for them. It may also happen that the [581] creditor takes a daughter of the debtor and, after she has reached marriageable age in the service of one of his wives, marries her. [583] Since the creditor, even in this case, /214/ pays his father-in-law the bride price, the debt remains standing in full and the kinship [672] bond only makes its repayment more certain. The heir is liable for

/214 cont./

426 686 [672] the full debts, not only up to the amount of the inherited property. If a warrantor is liable for the debt, he must satisfy the creditor if the debtor is unable to pay and, through that, becomes a creditor of the debtor himself. The liability of the warrantor does not end with his death, but passes on to his heir.

431 The nonacceptance of a gift is a rude insult to the giver and therefore never occurs. Giving is followed by counter-giving, except when the thing given was solicited by the ol momai = divine judgment. The Masai is put into the awkward position of having to ask in this way only if, for example, on an expedition of war, he has come a long way from his home district and finds no members of his lineage in the kraal to which he has come. The petitioner hangs from the roof of the hut of the one from whom he wishes to have a head of cattle a stool with the legs upward, or he wraps the legs of the stool or a bow with grass. This type is more urgent than the former, since the request must be granted before the grass dries. [784] The ol momai is a divine judgment. A person who does not grant the request expressed in the ol momai sign will soon be punished by 'Ng ai through death or illness. [783] A person who did not grant the request until after the grass had dried has himself absolved, for his own peace of mind, by a gathering of old men whom he entertains with a head of cattle and honey beer. It is believed that by the observance of this formality and by the statement of absolution of the old men God, too, has forgiven the sin. Upon handing over a gift, the giver always spits on it.

675 426 764 Loans or contracts are unknown. The creditor does not have a right to the corpse of the debtor; neither debts nor misdeeds or crimes committed by the deceased have an influence on the nature of his burial.

628 682 No distinction is made between murder and manslaughter, but there is one between these and negligent homicide. If murder was committed on a boy or warrior, it is expiated by blood revenge carried out by boys and warriors or only by warriors. Any brother [593] of the one murdered is first of all entitled to carry out the blood [672] revenge and, further, any man belonging to the family. Blood

/214 cont./ revenge goes first against the murderer or, if he has fled and is not available, against his brother or any man of the family of the murderer. Usually blood revenge is commuted by composition (wergild), the amount of which the murderer negotiates with the avenger through a friend. As a rule it consists of 200-300 cattle -- now fewer in many cases -- which the murderer, together with his people and his fellow lineage and tribal members living in the vicinity, that is, in the same district, gather together. The avenger is free to accept or reject the composition. /215/ Blood revenge is not carried out longer than one or two months after the murder; composition then takes its place.

The kraal of the ol oiboni is regarded as a place of refuge. If the murderer has confessed his deed here, blood revenge may no longer be carried out on him, though he remains obligated for the payment of the composition. Murder committed on a married man, a girl, or a woman is never expiated by blood revenge, but by a fine. Until the payment of the composition or fine the murderer is called ol oikobani (pl. el oikob). The murder of a blacksmith is unpunished. On the other hand, if a blacksmith murders or even only negligently kills a Masai, a band of Masai consisting of married men, warriors, and boys immediately sets out to kill several blacksmiths.

Negligent homicide is expiated only by fines. These are very minor if the perpetrator and the one killed belong to one lineage. If they belong to different lineages of the same tribe, every male member of the lineage (warrior, married man) and every married female member of the lineage must pay a cow. Of this livestock the brother of the one killed receives one half, while the other half is distributed equally to his fellow lineage members. The fine is paid and distributed analogously if perpetrator and victim belong to different tribes. If a woman kills a man through negligence, she will also be killed in most districts. On the other hand, if a man has killed a woman, he either remains unpunished or is given a beating by the brother of the woman killed. In a few districts no distinction is made as to whether the perpetrator acted intentionally or negligently, for example, in Loita, where blood revenge is also only very rarely used.

/215 cont./

682 only very rarely used. In these areas the perpetrator, as punishment
634 for the killing or the murder of a man, loses all his property; his
184 livestock, his wives and children pass over to the heir of the deceased. For killing a woman who has not yet given birth to a child, only half of the livestock of the perpetrator will be given to the widower. For the killing of a woman who has children, the perpetrator pays her husband 19 head of cattle and 19 goats or sheep. In this some distinguished as to whether the woman killed had a son or a daughter; in the former case the fine is greater than in the latter one.

683 Bodily injury with a fatal result is regarded as the same as murder,
[682] as is one that results in the loss of a leg. A person who cuts off another's arm (in some districts this applies only to the right arm) or makes it useless pays the injured one a few head of cattle and later, in case the crippled one is killed in battle, also the fine customary as atonement for murder. It is assumed in this case that the cripple was killed only as a consequence of his inability to fight. Serious injury to the head is atoned for with the payment of a cow, an ox, and a sheep, among others only with the payment of a cow; the fracture of an arm or leg, with the payment of one or two head of cattle, likewise the fracture or loss of a finger, with /216/ the exception of the two index fingers (os sogutihoi or ol osokutoni), which, as magic fingers, are "dangerous and evil." The destruction of an eye remains unpunished. One who tears off another's ear lobe pays him a goat or a sheep for it.

• 672 One who acts as an accomplice in a crime against life and health is punished in the same way as the perpetrator.

684 Rape, abortion, unnatural lewdness, which is said to occur as
[682] sodomy (1),

1. Cf. the remarkably frequent prohibition in 2nd Mo. /Exodus/ 22, 19; 3rd Mo. /Leviticus/ 20, 15; 3rd Mo. /Leviticus/ 18, 23; 5th Mo. /Deuteronomy/ 27, 21.

are not punished.

/216 cont./

687 [626] There is no special punishment for cowardice in war. The warriors, however, mock the coward in front of the girls and make him ridiculous in their eyes. 683 One who makes anyone ill through sorcery pays a head of cattle to the one bewitched. If the latter dies, the sorcerer must pay the fine levied for murder and is himself driven away.

681 The death penalty is carried out in that a band of armed men attack the defenseless sinner and kill him with spears. For a war /217/ traitor the execution is carried out by warriors, for an arsonist, by those injured by him. Fines are usually paid in installments. In general their amount is not fixed for the individual offenses. In the one area this, in the other that is regarded as the norm. Diminished ability to pay because of precious livestock sicknesses or unsuccessful wars naturally lowers the fine. Moreover, if in the district the fellow members of the lineage or tribe of the perpetrator have a preponderance in numbers or power over those of the injured one, the fines are considerably smaller than in the opposite case; then murder is often punished as negligent homicide, or many a time even left entirely unpunished, just like other crimes or misdemeanors. [672] Irresponsibility is regarded as mitigating in some districts, in others not. An attempt is not punished. Self-defense is not mitigating.

[714] [701] [684] [685] A degrading punishment exists only for the warriors and consists of cutting off the guilty man's braid-coiffure, as is well known, one of the insignia of his standing. This punishment is said to be inflicted most frequently for rape committed on a married woman, less often also as additional punishment for theft. Innocent accused persons are remunerated with a goat or a sheep. 734 672 The mentally ill occupy an exceptional position in the legal world only insofar as they are unable to pay fines. In most cases their people are then liable. The latter therefore keep in fetters the sick person who is inclined [755] toward misdemeanors or crimes. Frequently, too, if an ol goiatiki does not succeed in curing him through magic remedies, he is tied to a tree at some distance from the kraal, to be devoured by predatory animals.